United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 903

Case No. 987: KHALIL

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Victor Yenyi Olungu;

Whereas, on 12 August 1997, Mohammad Haj Khalil, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting, inter alia: (a) that his date of birth be recognized by the Agency as 11 November 1937; (b) that the decision to the contrary be rescinded; and (c) that he be paid compensation for the losses that he suffered because of the Respondent's failure to recognize his date of birth as 11 November 1937 and refusal to defer his date of retirement to the end of November 1997.

Whereas the Respondent filed his answer on 25 May 1998;

Whereas the facts in the case are as follows:

The Applicant entered the service of the Agency on 8 February 1956, as a Teacher, at the grade 4 level, at El Buss School, Tyre, Lebanon. He was successively promoted,

eventually reaching the grade 17 level, in the post of Senior Education Officer. The Applicant separated from service upon retirement on 30 November 1996.

On 12 May 1955, an application for employment form, giving "11/11/1936" as the Applicant's date of birth, was submitted. The form indicates under the heading "Personal history", "I was born at Kabri in the year 1936." This form, contained in the Applicant's personnel file, is typewritten and unsigned. The signature line bears the typewritten abbreviation "Sgd." On 10 April 1956, a separate application for employment form bearing the Applicant's name and personal information was completed and signed. That Application noted "11.11.1936" as his date of birth and stated under the heading "Personal history", "I was born in 1936, at Kabri Village." On 11 April 1956, the Applicant signed an "UNRWA Agreement - Beneficiary" form, also signed by an UNRWA representative and two witnesses, on which his date of birth appears as "11 Nov. 1936". On 25 April 1963, and on 19 July 1967, the Applicant signed two separate Area Staff Dependency Reports on which his date of birth appeared as "11/36".

On 8 September 1967, the Applicant was provided with a United Nations Laissez-Passer, on which the date of his birth is noted as "11 November 1937". On 15 March 1971, the Applicant signed a Designation, Change or Revocation of Beneficiary Form giving "11 Nov. 1937" as his date of birth.

On 27 August 1989, the Applicant informed the area Personnel Officer that he had received a document from the Agency that incorrectly noted his date of birth as 11 November 1936, instead of 11 November 1937, and asked the area Personnel Officer to take the necessary action to correct it. On 31 August 1989, the area Personnel Officer wrote to the Applicant, noting that 11 November 1936 had been given as his date of birth in his application for employment form and in other Agency documents. On 13 September 1989, the Applicant advised the area Personnel Officer that the date "1936" must have been a typographical error and that the handwriting on the application for employment form was not his own. He provided the area Personnel Officer with several documents showing his

birth date as "1937". On 8 November 1989, the Chief, Personnel Services Division, informed the Applicant that his date of birth could not be changed in the Agency's records, noting that:

> "The Agency's policy is strictly opposed to the amendment of a birth date declaration which has been made the subject of a formal certification at the time of recruitment. Once a certified birth date has been accepted by the Agency, it becomes a part of the Agency's internal and official records. As such, it governs the application of all the relevant staff regulations and staff rules to the staff member's service with the Agency, including the date of retirement."

Further correspondence ensued between the Applicant and the Chief, Personnel Services Division, concerning this matter. On 15 February 1990, the Chief, Personnel Services Division, informed the Applicant that "the Director of Personnel [has] confirmed our earlier advice to you."

On 16 October 1995, the area Personnel Officer informed the Applicant that on 11 November 1996, the Applicant would reach the age of retirement and that the Agency would not defer his retirement beyond that date. On 20 July 1996, the Applicant wrote to the Commissioner-General requesting that his date of retirement be deferred to the end of November 1997, in the light of the mistake made in the Agency's records regarding his date of birth. In a reply dated 16 September 1996, the Director of Administration and Human Resources "confirm[ed] all previous correspondence on the subject" of the Applicant's date of birth, in accordance with the policy set forth in personnel directive A/9. He also rejected the Applicant's request for an extension of his service beyond retirement age, on the ground that such request had not been submitted to the Director of Administration and Human Resources one year before the retirement date, as required.

On 25 September 1996, the Applicant requested the Director of Administration and Human Resources to reconsider his decision, claiming, inter alia, that a grace period had been given to staff to amend their date of birth in the Agency's records, and that, because

he was on secondment to UNESCO during that time, he had been unaware of such a grace period. On 2 October 1996, the Director of Administration and Human Resources confirmed his earlier advice.

On 5 November 1996, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The JAB adopted its report on 18 May 1997. Its evaluation, judgement and recommendation read, in part, as follows:

"...

1. The appeal is not time-barred as the Appellant has been continually and consistently requesting to change his date of birth in Agency records ever since 1989.

...

In this context, the Board is of the opinion that the evidence submitted by the Appellant has been sufficient and acceptable to support his claim to have his date of birth changed from 1936 to 1937, which the Appellant had been providing the Agency since 1989.

IV. RECOMMENDATION

17. In view of the foregoing and without prejudice to any further oral or written submission ..., the Board unanimously makes its recommendation that the decision appealed against be reversed."

On 4 June 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"I have carefully reviewed the Board's report and noted its conclusions. The Board rejected the Administration's preliminary submission on the receivability of the appeal. The Board took the view that the evidence you submitted was sufficient and acceptable to support the claim to have your date of birth changed to 1937. [As a] result, the Board unanimously recommended that the decision under appeal be reversed.

I regret that I cannot agree with the Board's conclusions. There is a scarcity of reasoning set out by the Board as to how it reached those conclusions. In my view, the appeal was not receivable by the Board by virtue of non-compliance with area staff rule 111.3, nor were the exceptional circumstances which would warrant a waiver of the time limits. The Board appears not to have taken account of all of the documents you signed which gave your date of birth as 1936, and the effect of personnel directive A/9. The Board was apparently swayed by your submission as to a 'grace period' of which you say you were not notified. I am advised, however, that there never was such a grace period. [As a] result, I do not believe that you have shown cause why the administrative decision should be changed or reversed. Accordingly, your appeal is dismissed."

On 12 August 1997, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant has provided sufficient evidence to prove that his correct date of birth is 11 November 1937, and not 11 November 1936. The documents on which the incorrect date appears, were not signed by him.

2. The Applicant did not lodge his appeal earlier because he had acted as Chairman of the JAB during the mid-eighties and thought it embarrassing to lodge an appeal. He further believed that the matter could be resolved without his having to resort to the appeals process.

Whereas the Respondent's principal contentions are:

1. The application is not receivable by the Tribunal, as the Applicant did not observe the time limits for lodging his appeal.

2. The Applicant's services were correctly terminated by reason of his age.

3. The Agency's policy in relation to changing birth dates was correctly applied to the Applicant.

The Tribunal, having deliberated from 4 to 20 November 1998, now pronounces the following judgement:

I. The Applicant appeals the Commissioner-General's decision dated 4 June 1997, not to accede to the Applicant's request that his date of birth be changed in his official files from 11 November 1936 to 11 November *1937*. The Respondent had rejected the JAB's recommendation, which was in the Applicant's favour, because (1) the appeal to the JAB had not been lodged with the JAB within the time-limits prescribed under the area staff rules, and (2) the Applicant was not entitled to have his birth date changed, as such change was contrary to the Area Staff Rules.

II. The Tribunal notes that the JAB received the application and addressed the merits of the appeal. The Tribunal is also prepared to receive the appeal before it and pass judgement, in accordance with article 2 of its Statute. The Tribunal notes that the Applicant had tried, on prior occasions, to have his date of birth changed and continued to provide documents to the Agency that he believed supported his claim. Thus, the discussions between the Applicant and the Agency appeared to be ongoing and the appeal was properly considered to be timely. In addition, the Tribunal considers it convenient to reassert the policy contained in personnel directive A/9.

III. Paragraph 6.1 of personnel directive A/9 read at the time as follows:

> "A staff member's age for retirement purposes shall be determined on the basis of evidence on UNRWA personnel records. Staff members will not be allowed to change a previous birth date declaration."

This provision was amplified to include the following:

> "Once a certified date of birth has been accepted by the Agency, it becomes a part of the Agency's internal and official records. As such, it governs the application of all the relevant staff regulations and staff rules to the staff member's service with the Agency, including the date or retirement and, as an internal record of the Agency, it is beyond the jurisdiction of external parties. For a number of years the staff member's date of birth has been on the pay slip. The Agency therefore is entitled to assume that staff members who have not already petitioned to change their dates of birth accept the Agency's records as being correct."

IV. The language of the Directive is categorical: it purports to prevent staff members from seeking to change their date of birth as a means of postponing retirement. The policy was first promulgated in this Directive when the prior provision, as the Respondent has noted, "was reworded with effect from 1 March 1989". The Directive thus applies to the Applicant, since he sought to change his date of birth several months later, on 27 August 1989.

V. The Applicant objects to the application of this Directive to his case because the Directive only applies once a certified date of birth has been accepted by the Agency. In his case, he argues, there was no such certified date of birth.

VI. As to available evidence: the records of UNRWA contain a copy of an unsigned original of an application for employment form, dated 12 May 1955. On that document, the Applicant's date of birth is 11 November 1936. The Applicant filled out a second application for employment form on 10 April 1956, this one bearing his signature and showing 11 November 1936 as his date of birth. The Tribunal finds the Applicant's protestation that the date of birth on that application had not been certified, to be at odds with his assertion that he cannot obtain a copy of his birth certificate, the only document that could permit a true certification. It is for practical reasons that serve both the Agency's

and staff members' interests, that the Respondent accepts the staff members' word regarding personal data that cannot be otherwise verified.

VII. Actually, the only critical document is the original birth certificate of the Applicant, which does not appear to be obtainable. This would be the sole document on which the Applicant's birth date is not based on his word. The birth dates recorded on all the other documents are either based on the Applicant's word or on a former document issued on the Applicant's word. In such circumstances, the authorities issuing such documents had to believe the Applicant or condemn him not to travel, not to marry, not to register his children, etc. The Tribunal, then, is not persuaded by the large number of documents brought in as evidence.

VIII. The legal question in this case lies in the application of the clear terms of personnel directive A/9 to the facts of the case. As to the evidence relative to such facts, the Tribunal does not need to go into the validity of the first application for employment form presented by the Applicant, which is not the original document nor is it signed by the Applicant. But the Tribunal is bound to accept that the date of birth on the second application for employment form presented by the Applicant could not have been certified other than by the Applicant's own word.

IX. The Applicant's signature is preceded by the words: "I certify that the statements made by me in answer to the foregoing questions are true, complete and correct in all respects". Under the heading "Personal history", the Applicant says: "I was born in 1936, at Kabri Village."

X. The date of birth of the Applicant given on three subsequent Agency documents coincides with the date on the second application for employment form. These are: (a)

UNRWA Agreement - Beneficiary form of 11 April 1956; (b) Area Staff Dependency Report of 25 April 1963 and (c) Area Staff Dependency Report of 19 July 1967. The three signatures on the cited documents appear to be different. The Tribunal assumes, however, that the three signatures represent the signature of the Applicant, as the Applicant had a great interest in the documents in question, and he could not have overlooked them.

XI. The Tribunal has no reason to doubt the veracity and authenticity of these documents: they expressed the Applicant's good faith statement of his date of birth on documents having a different purpose than just ascertaining his age. On 15 January 1990, the Applicant presented an identification document issued by the Higher Arab Committee for Palestine in Beirut on 23 April 1953. The Applicant maintains that this document "stands for my birth certificate", that it "was issued 3 years before I joined UNRWA", and that it "clearly states that my DOB [date of birth] is 1937." However, since the Applicant himself has maintained that he did not possess his original birth certificate, the document must have been issued on his word, just as the others.

XII. Why the Applicant, when he joined the Agency, stated that he was born in 1936 is a matter of speculation. One possibility, however, must be discarded, and that is his being mistaken in making such assertion: the Applicant states that "it was rather difficult to forget my [date of birth] especially at that stage of youth." If he stated 1936 as his date of birth, it was 1936. But even assuming that he was mistaken, or absent-minded, that circumstance would also be irrelevant. The Agency adopted a policy, codified as personnel directive A/9, which gave total priority to the first date of birth declared by a staff member in the Agency's internal documents over all other declarations. In matters of retirement age, the Agency requires certainty since not only the rights of the retiring staff members are at stake, but also the interests of other staff members in pursuing their careers by filling the vacant posts of those who retire.

XIII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Victor YENYI OLUNGU
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary